IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4606 of 1993

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JHAVERCHAND GAEKWAD LTD - Petitioner(s)
Versus
ABHIRAM J YADAV & 29 - Respondent(s)

==========

Appearance :
MR KM PATEL for Petitioner(s) : 1,
MR PRAFUL J BHATT for Respondent(s) : 1 - 30.

==========

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 17/10/2007

ORAL JUDGMENT

The petitioner before this Court is one Jhaverchand Gaekwad Limited (hereinafter referred to as, **“the Industry”**), is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as, **“the Act”**).

The respondents are the workmen. The Industry challenges the order dated 1st February, 1993 made by the Labour Court, Vadodara in Recovery Applications Nos.2/1992 to 60/1992. By impugned order the Court below has directed the Industry to pay the respondents-workmen wages for the period from 1st November, 1991 to 8th July, 1992.

On 1st August, 1991 the Industry had given notice of closure with effect from 31st October, 1991. The Industry had also applied to the State Government for permission for closure. As no communication was received by the Industry within 60 days, the Industry treated it as a deemed closure. However, after expiry of 60 days on 21st August, 1991 the Industry received refusal of permission to close the Industry. The Industry, therefore, made application for review, which came to be allowed on condition that the Industry deposits the amount of legal dues payable to the workmen. Such deposit was not made until 6th July, 1992. The workmen (134 in number) made the above referred Recovery Applications Nos.2/1992 to 60/1992 for recovery of wages for the period from 1st

November, 1991 till 6th July, 1992. Pending the said applications, the Industry settled the dispute with some of the workmen. The dispute, however, was continued by thirty workmen, the respondents herein.

Before the Labour Court, the workmen maintained that as the permission to close was conditional and until the condition was satisfied the Industry cannot be said to have been closed. The due date of closure therefore was 7th July, 1992 and not 31st October, 1991 as maintained by the Industry. The Labour Court, considered the matter and held that the Industry had legally closed on 7th July, 1992. The workmen were, therefore, entitled to wages upto 6th July, 1992. Accordingly, the order was made to pay a sum of Rs.2,50,902=65 to the workmen towards the wages upto 6th July, 1992. Feeling aggrieved, the Industry has preferred the present petition.

Mr.Patel has submitted that the matter at issue before the Court below was which was the valid date of closure – was it 31st October, 1991, as maintained by the Industry or was it 7th July, 1992, as alleged

by the workmen. The dispute was contentious and was required to be decided after recording evidence and elaborate arguments. Such contentious issue could not have been decided in the recovery proceedings under Section 33C(2) of the Act. Mr.Patel has, however, candidly submitted that pending this petition, under the interim order made by this Court, the Industry had deposited the aforesaid sum of Rs.2,50,902=65. The said amount was also allowed to be recovered by the workmen. He states that irrespective of the result of this petition, the Industry does not intend to recover the said amount from the workmen.

The petition is contested by Mr.Bhatt. He has supported the impugned order made by the Labour Court.

I do agree with Mr.Patel. The matter at issue, which was the valid date of closure of the Industry, was a contentious issue before the Labour Court. It is apparent that the Court below has decided the same after recording evidence and elaborate arguments advanced by the parties. Evidently, the Labour Court

has, while exercising its jurisdiction under Section 33C(2) of the Act, ventured to record finding on contentious issue and thereby it undertook the function of adjudication. This precisely is what is not permitted in exercise of power of execution conferred by Section 33C of the Act. Undoubtedly, the Labour Court has overstepped its jurisdiction or has made the impugned order without the authority of law.

For the aforesaid reasons, the petition is allowed. The impugned judgment and award dated 1st February, 1993 passed by the Labour Court, Vadodara in Recovery Applications Nos.2/1992 to 60/1992 is quashed and set-aside. The sum of Rs.2,50,000=00 paid to the workmen in compliance with the impugned order dated 1st February, 1993 be treated as ex-gratia payment made to the workmen and be not recovered from the workmen.

Subject to the above directions, rule is made absolute. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

/moin